THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

A.S.NO.2468 OF 1985
AND
TRANSFER A.S.NO.2391 OF 1987

COMMON JUDGMENT:-

Both the appeals arise out of a common judgment in O.S.No.359 of 1980 and 186 of 1980 on the file of the Court of Senior Civil Judge, Penukonda.

02. The plaintiff in O.S.No.186 of 1980 is the husband of the plaintiff in O.S.No.359 of 1980. The subject matter of the suit in O.S.No.186 of 1980 is the landed property and the subject matter of the suit in O.S.No.359 of 1980 is the house property. The pleadings in both the cases are common. The suits were filed for declaration of title and recovery of possession.

03. The allegations in the plaint goes to show that one Thimmakka and Sarojamma are the daughters of the 3rd defendant. The husband of the 3rd defendant Pedda Hanumaiah died on 04-05-1943. The defendant Nos.1 and 2 and husband of the 3rd defendant are the step-brothers and sons of one Masalti Bheemanna. Bheemanna has ancestral property of 7 or 8 acres at Madakasira. The 3rd defendant is the only daughter and her husband Pedda Hanumaiah was taken in illatom-adoption and was living at Pydeti village. Pedda Hanumaiah acquired the suit schedule properties with his own earnings and died. Subsequently, the 3rd defendant has become the owner of the property. She has gifted the

landed property in favour of the plaintiff in O.S.No.186 of 1980 and house property in favour of the another plaintiff under two separate gift deeds dated 08.12.1975 and the defendants have forcibly occupied the said properties.

04. The defendants have filed a written statement denying that Pedda Hanumaiah has got any separate earnings and according to the defendants he was never treated as an illatom son-in-law. It was their plea that there was ancestral nucleus and from that only the properties were purchased by Pedda Hanumaiah being the Manager and, therefore, the 3rd defendant did not succeed any property and consequentially the gift deeds are not valid. The suit is, therefore, liable to be dismissed.

05. On the basis of the above pleadings, necessary issues have been framed in both the suits and a joint trial has been conducted. After considering the evidence on record, the Court below has decreed both the suits. Aggrieved by the said judgment, A.S.No.2468 of 1985 was filed against the judgment and decree in O.S.No.186 of 1980 and Tr.A.S.No.2391 of 1987 was filed against the judgment and decree in O.S.No.359 of 1980.

06. The points that arise for consideration are:-

1) Whether the suit schedule properties are the joint family properties of Pedda Hanumaiah and defendant Nos.1 and 2?

2) Whether the gift deeds in favour of the

plaintiffs are not valid and binding on the defendants?

3) Whether the plaintiffs are entitled for the declaration and possession claimed?

POINTS:-

07. There is no dispute about the relationship between the parties. The theory of illatom son-in-law has been negatived by the Court below. For a decision in this suit, the point that has to be considered is whether the properties admittedly standing in the name of Pedda Hanumaiah, which are the suit schedule properties were acquired by him with the ancestral nucleus or by his own earnings.

08. The gift deeds are marked as Exs.A.1 and A.3. Evidently, Bheemanna, who was the father of defendants 1 and 2 and husband of defendant No.3, died on 22.09.1923 as per Ex.B.1. It is not in dispute that Thimmakka, the mother of Pedda Hanumaiah and mother of defendants 1 and 2 are the sisters. In order to succeed, the burden is on the defendants to show that the properties were acquired by Pedda Hanumaiah with the ancestral nucleus. In order to show that the family has got ancestral nucleus, the defendants want to rely upon the fact that Bheemanna was a Daffadar in Taluk Office and he purchased some land under Ex.B.3. The suit schedule properties were acquired under Exs.B.5 to B.8 and B.10 by Pedda Hanumaiah. In order to show that there is sufficient income, the Court below has rightly considered that the burden is on the defendants to prove not only the existence of the ancestral property, but

the nucleus, which is sufficient from that property to purchase the properties, which are in the name of Pedda Hanumaiah. The evidence of DW.1 does not show as to what are the survey numbers of the lands possessed by his father and from whom he has purchased the property. Though some records are said to be available, they are not filed. In fact, Ex.B.43, which is the certified copy of diglot register of Pydeti village relating to the suit schedule property, was filed and they are in the name of one Gorla Bheemanna. DW.1 tried to connect this with his father, but there is no sufficient evidence. The Court below after considering the evidence on record, came to a conclusion that Ex.B.43 is not proved to be possessed by the family and there is also no material to hold that Pedda Hanumaiah has purchased the land and got sufficient income. In fact, the Court below also found that there is no material about the purchase by Bheemanna. In fact, the allegations in the plaint do not show that with the income from the land at Pydeti village, the lands were purchased.

09. On the other hand, the lower Court has taken into consideration the fact that Pedda Hanumaiah was staying with PW.2 at Pydeti village, which fact clearly goes to show he could not have managed any of the properties at Madakasira. The evidence on record clearly goes to show that PW.2 has got sufficient properties and the 3rd defendant is the only daughter of PW.2 and consequently there is sufficient source of support to Pedda Hanumaiah to acquire the properties. Even if the theory of illatom is not believed,

still the factum of living in the house of father-in-law is established. Further-more, it is an admitted fact that one Hosakorappa is said to have conveyed some property to Pedda Hanumaiah and it is admitted so by DW.1 and Ex.A.13 is the sale deed, which shows that an extent of Acs.32.32 Gts., was sold by defendant No.3 on 25.08.1958. This document clearly goes to show that Pedda Hanumaiah acquired the properties and the document was attested by defendants 1 and 2 and father-in-law of defendant No.1. An attempt was sought to be made by claiming that Pedda Hanumaiah was only a nominee and the fact subsequently the father-in-law of defendant No.1 sold the same property to others under Ex.B.41, which shows that Ex.A.13 was not real. In fact, all these pleas were not there and no explanation was given by defendant No.1 or defendant No.2 for the compelling reasons to attest Ex.A.13. The subsequent document Ex.B.41 can have no validity when the sale deed is in favour of Pedda Hanumaiah. Added to that, the Court below was inclined to accept the evidence on record about the cattle trade, which the Pedda Hanumaiah was doing and has got independent source of income. Therefore, from the material evidence on record, the Court below has found that the plea of the appellants that the properties owned and possessed by Pedda Hanumaiah are the joint family properties cannot be accepted. In fact, except Ex.B.43, there is no other document to show that Bheemanna, father of defendants 1 and 2, has got such a capacity to purchase several items of the property. Ex.B.43

is not proved to be a document of title for Bheemanna. On the other hand, the Court below has rightly considered the resources of Pedda Hanumaiah and held that all the properties are self-acquired properties. In fact, the theory of Pedda Hanumaiah being the Manager of the joint family does not appear to be correct in view of the fact that he was living in the house of PW.2 at Pydeti village.

10. Therefore, for all the above reasons, I find that there are no grounds to interfere with the judgment and decrees of the Court below and both appeals are liable to be dismissed.

Accordingly, both the Appeals are dismissed. No costs. Miscellaneous Petitions, if any, pending in these appeals shall stand closed.

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N.R.L.NAGESWARA RAO,J

18-04-2013
TSNR